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## **EUROPEAN MODEL OF CONSUMER PROTECTION**

### **MODERN HISTORY OF CONSUMER LEGISLATION**

Laws aimed at protecting consumers, there are already many centuries. Initially, they dealt mainly as nonconforming or counterfeit products of everyday use - such as diluted milk, beer, chalk in bread or impurities cheaper metals in gold, and so on. Although the laws were designed to stop fraud, they are equally needed as consumers and traders. Fair artisans and food vendors did not want to lose business because of lower prices or unlawful competition. Parallel interests of producers and consumers remain an important feature of consumer protection in Europe today.

A comprehensive consumer protection, in the form it is discussed and implemented today began to develop only in the late 19<sup>th</sup> century in the US and in Europe. This was the result of the industrial revolution. By then, most of what people ate drank and used in their homes, or they are grown and made you or bought from other inhabitants of the area, which they knew personally. Industrialization separates the production and distribution of the congregation, and significantly expanded its range of available products. Market has become impersonal and more and more products have come from afar. Accordingly, significantly increased opportunities for fraud. At the same time it became much harder to get compensation from a large and remote factory than from his neighbor who probably had done their goods. In addition, the development of advertising consumers began receiving a large amount of information that they could not estimate - it could be a realistic and accurate, could be misleading or even false, but they could identify?

Most countries in Western Europe began to develop comprehensive legislation in the period after 1950. First there were separate legislation - specific legislation to address specific issues, such as fair advertising, improving information to consumers through packaging for industrial and food products, and basic safety requirements. Gradually the idea in

relation to a recognized list of consumer rights and coherent set of legislation and for its implementation. As a result, in recent years the country for the first time accepted the laws on consumer protection, used extensive acts that apply to many aspects of consumer protection. This approach is used countries that carried out the transition from a planned economy (including those who are now members of the European Union), but also used in many developing countries in Latin America, Asia and Africa, where consumer issues initially drew little attention.

In YEYE are pan-European laws (Directives) to be implemented through legislation of individual countries. On the other hand, the Directive set out the general requirements that must fulfill some countries, but not how to be organized by national laws. Because of this, there are still significant differences in the structure of consumer laws and institutions to ensure its implementation.

## **CONSUMER POLICY**

Idea a list of consumers first proposed by President John F. Kennedy in his address to Congress in 1962. This was the 15<sup>th</sup> of March - that date international consumer movement later adopted as the International Day of Consumer Rights and the EU adopted its customers a day in Europe.

President Kennedy spoke about the four consumer rights. Since then, through discussions with consumer organizations, the list was expanded to eight rights that are accepted and protected by the international organization "Consumers International" and its members. Most laws on consumer protection designed to protect one or more of these rights or complex "Act on Consumer Protection" covers all of them.

## **COMPETITION**

According to a market economy, consumers' interests are provided in part due to the efficient functioning of the market. When consumers have a choice, this is forcing manufacturers and retailers to offer high quality products and keep prices. If they try to sell products of poor quality or higher prices, consumers can always "vote down" and buy products elsewhere. At least, that is the theory, and to a large extent this is actually the case. But for the effective functioning of competition there are numerous obstacles.

Where possible, manufacturers try to limit it in order to increase their

profits. Accordingly, one of the components of consumer protection - is laws and institutions aimed at the development and regulation of competition and prevent abuses its position in the market by manufacturers. Among the most common anti-competitive practices - private agreements between groups of producers (called "cartels") to "fix" the market, for example through an agreement to establish a uniform price or market division on geographical areas. Competition may also be restricted when the marketplace begins to dominate one firm - if the majority of supermarkets owned by the same company, it can raise prices because consumers will be nowhere else to go. Thus, competition regulations generally provide opportunities to limit individual firms that become too powerful, for example by preventing further expansion of market share if it already controls a significant part of the market. Most governments consider legislation on competition as a positive factor for improving the overall performance of the manufacturers and the service sector, as well as for consumers. The reason for this is that competition increases efficiency, and accordingly - competitiveness on international markets, thereby promoting exports and creating difficulties for importers.

The competition is also limited when consumers can not exercise effective choice. For this, they need reliable information. This means understanding the types of available products (e.g., advantages and disadvantages compared with cotton wool or synthetic fabrics for various kinds of garments, or different types of collateral for buying a home). It also means having detailed facts about all the available brands and models and prices. If manufacturers do not force a lot of them do not provide comprehensive information. Some of them, to provide sales, intentionally injected misleading consumers. Others give information selectively, or focus on the image and not on the merits of their products - which is a typical feature of advertising. Competition therefore increases the ability of consumers to increase the weighted selection. This may involve a restriction that can make enterprise and establish requirements for accurate and consistent information.

## **IMPROVING THE ABILITY OF CONSUMERS TO ACTION AND CONSUMER PROTECTION**

Regardless of whether the high level of market competition, consumer rights is defined as enterprises are much more powerful than

individuals. They not only distribute goods and services, some of which are important for consumers, but also have detailed information on products and services, and in many cases also have significant resources for advertising and to counter criticism if they do not work properly. Compared to this, individuals are weak; they can not be experts on all types of products and services they offer; they do not have time and money to conduct market research for the evaluation of competitive products and check prices at dozens of stores, or for the implementation of legal procedures to provide compensation when something goes wrong. Accordingly, the consumer rights relating to changes in the balance of power between companies and individuals.

This is achieved through:

Improving the ability of consumers to action. It provides training and education, the existence of specific information on products and services, and legal rights that can easily provide. Typically, information needs are provided by establishing requirements for labels and provide effective instructions, the minimum amount of factual information in advertising and price indication. Government agencies also publish general information and educational courses on consumer issues can be included in school curricula. Legal rights can provide the right to return products that do not work, or for which consumers were given misleading information.

Setting limits on commercial enterprises. Help consumers in obtaining reliable information does not mean that companies do not resort to different kinds of strategies and tricks of trying to convince to buy your products or escape from responsibility for poor quality goods. Therefore, consumer protection also includes restrictions on what businesses can do. The starting point is that products must be safe and perform the functions that are expected of it for some time (buyers mainly have a chance to check the time of purchase). Enterprises also can not use unfair terms in contracts (which is a particular problem in the case of services). They should also provide accurate information about their products, including the one contained in the advertisement.

## **CONSUMER RIGHTS**

In addition to these rights, consumer support organizations support them (although not listed in this form), "Guidance Document of Consumer Protection," adopted in 1985 and revised in 1999.

The right to security.  
The right to receive information.  
The right to consumer education.  
The right to compensation.  
The right to be heard.  
The right to choose.  
The right to satisfaction of basic needs.  
The right to a healthy environment.

## **CONSUMER PROTECTION IN THE EU**

In most EU countries before the recent expansion were adopted national laws to ensure all eight of consumers, or some of them. The main objective of measures taken by the EU is to ensure consistency between countries mainly by setting minimum requirements for specific aspects of consumer protection.

The EU is the result of agreements among member countries regarding joint implementation of specific actions, defined in a series of formal agreements. The main, and still the most important objective is to create a single common market, where businesses can do business wherever they want, and where consumers can buy goods wherever they want without experiencing difficulties and complications caused by different national laws and market crops. The aim of the single market is to promote competition and thus - business efficiency and growth.

The EU itself does not establish laws for member countries. It works through a Directive which, where agreed by all members should be embodied in the legislation of each country. The Council of Ministers adopts Directive (i.e. representatives of member governments). The European Parliament, elected by direct elections, also plays a role in the decision.

Compliance with all guidelines (known as the "Code of the EU" - the original *acquis*, from the French word which means "experience") is a requirement for countries wishing to join the EU. Work related to the extension and complement existing national legislation is one of the reasons why the accession process continues for many years.

First on consumer protection was seen as a separate issue in the EU. Benefits for consumers were provided with effective job market and consumer issues dealt with the development of the single market. Thus, consumer issues were considered as part of the changes in the contract law, transport policy, competition, standards and food safety, and more.

Since the mid-1970s to continue the situation is gradually changing, but only with the adoption of the Maastricht Treaty in 1993 it became possible to take a Directive on consumer rights, which are not directly related to market integration or harmonization. This led to the creation of a separate structure of the European Commission Directorate Consumer Policy. Later his responsibility also includes the issue of health and food safety, and is a body known as the European Union Directorate General for Health and Consumer Protection - DG SANCO.

There are dozens Directives somehow related to consumer protection. But most important of them relate to four major aspects.

## **SECURITY**

Various Directives require that all products sold to consumers were as safe as possible, and contain criteria that products must meet to ensure this. Manufacturers and importers are responsible for the safety of the products they sell. In every country there should be bodies responsible for checking compliance and the withdrawal of dangerous products from the market if necessary.

There are various Directives relating to certain product categories - such as food, toys, chemicals, cosmetics. In addition, there is a Directive on general product safety, the effect of which applies to all, but because it concerns safety requirements regardless of whether there is a separate Directive for that type of product.

The European Commission also manages systems warning of dangerous products, that when any country revealed the existence of the problem, other EU countries (and countries outside it) quickly receive information and, if necessary, may take appropriate measures in its territory.

## **FOR THAT, WHAT PAID**

When consumers buy products or services between the seller and there is a contract. The consumer agrees to pay a certain price, and the seller - to provide exactly what the consumer expects. Details of services usually contained in a written agreement. The products can be purchased right on the spot (in the store), as described in the catalog or on the website, but if you offer something to buy and the seller agrees to sell, it means the emergence of contractual relationships, even if the terms are not spelled out.

Directive regulating three problems:

Production is not the one you agreed to buy - for example, it is different from the description in the catalog or on the image on the box

Production is not working properly, damaged or breaks down quickly.

In such cases the consumer has the legal right to a refund, replacement products, its repair - depending on the choice of the consumer.

The contract contains unfair terms - which are usually related to service. These include, in particular, the requirements for cash collateral that does not return (and you lose even if the product or service is not satisfactory) or during the performance of indefinite end, so you do not have the opportunity to opt out or receive compensation even if half of the service took longer than it should be.

Unfair terms are recognized simply illegal - they should not be written contracts and are not enforceable even if the consumer signs an agreement containing them. Contracts should also be written in plain language that enables them to easily understand.

There are some specific rules regarding tourism. They do not allow tour operators to raise prices after the order was placed (unless it was caused by changes in taxation or currency fluctuations) and require tour operators to contribute to the fund protection, which allows tourists to return home if the company goes bankrupt while they stay on vacation.

For some time vendors typically include provisions to contracts waiver under which consumers agree that their legal rights are not applied. Now those provisions are illegal and not enforceable.

## **CONSUMER INFORMATION**

The Directive contains a wide range of requirements concerning information on the labels. Food products, for example, must contain a complete list of ingredients and indicate the presence of potential allergens (such as nuts). There are also rules for describing products as "organic," or the use of regional food names, such as cheese "Parmesan" or "Parma" ham. All genetically modified products should be appropriately labeled.

Similarly, large kitchen appliances must be marked in relation to power consumption under normal conditions.

The law also requires specific pricing information. In particular, supermarkets can not provide prices for package only food or other

products, but should also indicate the price per unit - that report, the price of the package refers to the standard unit (ie, 5.5 euros for 100 ml). This enables consumers to easily compare the cost and prices, even in cases where products are sold in different quantities.

Standardized information should be provided also in relation to financial services such as loans or credit cards. Interest rates calculated by the standard method of calculating percent in annual terms (annual percentage rate - APR), consumers should be informed before they put their signature. In this case, consumers are able to compare products easily and correctly.

In this case, there are also special requirements for package (complex) tours; booklets must provide full information about what is offered - moving, location, prices, payment plans. These settings can not be changed after the order was made.

## **ADVERTISING AND OTHER MARKETING ACTIVITY**

Advertising in Europe as a whole must be honest, decent and truthful. Specific rules for settlement cut off in different countries. For example, in the UK there is a system of self-regulation, carried out by the Committee of Advertising Standards (Advertising Standards Authority - ASA), whose activities are governed by and paid for by the advertising industry. It publishes codes of conduct, and it is expected that advertisers will follow them. Generally, this method works - partly due to the fact that he was closely watching the government and the media; in the advertising industry understands that when the ASA will not perform its functions, it will replace the state agency with the authority to ensure implementation of the law. Other countries use the direct involvement of the state and there are stricter rules, especially for advertising aimed at children.

EU adopts Directive on the settlement of certain issues related to marketing.

Remote sales. In cases where the goods and services sold by phone, mail order or via networking, there are easy opportunities to mislead consumers enter or provide them with relevant information. The Directive requires the vendor to provide a full range of information before a sale takes place, namely - contact information about themselves (including address), a full description of the product or service, full price, terms of delivery, as well as details regarding the right of consumers to refuse. There should also be given written confirmation of



agreements on the sale. In the case of the sale of loans and credit cards, must be specified interest rate and period of validity. Consumers have the right to refuse the order within seven days (in some countries - later), and the goods must be delivered within 30 days. Calling customers via automated phone systems or sending them faxes with commercial proposals without their prior consent is illegal.

Sales per inert buyer - sending goods that were not ordered, and then demanding payment. Consumers bear no responsibilities when it happens - they can simply leave the goods themselves or get rid of it at will. (Previously, they had to give the sender the opportunity to pick up goods).

Sales of delivery, unless the seller is a merchant of delivery, or sales catalogs, customers will automatically receive the right to refuse the order within seven days (again, in some countries - for a longer period) if someone sells them all they have at home or elsewhere outside the usual place of business.

Unlawful commercial practices. This includes the use of misleading or aggressive sales techniques. Directive declares illegal provision of false information about products, Vendor, repair, prices or comparisons with other products if it is "likely could significantly distort the behavior of the average consumer." It also prohibits intimidation, coercion or force. Directive 31 counts unacceptable method.

## **FURTHER DEVELOPMENT**

Most of these Directives contain minimum requirements - if necessary, national governments may set higher standards. Some are doing just that, especially extending the period during which consumers can cancel their agreement with the seller at home, by telephone, Internet or mail order.

Currently the European Commission is reviewing eight directives and decides whether to proceed to full harmonization. This would mean that the Directive should be executed entirely the same in all countries, with no possibility of applying stricter rules. Consumer organizations generally oppose it because most stringent rules may not be approved in 25 countries. This means that due to the fixed law of pan-European consumer protection in some countries be weakened.

Equally important is the fact that each of the Directive requires national governments to take responsibility for ensuring control and compliance, which they are. Types and structure of government, which

is charged, in various countries cut off. Proposals for such arrangements no unification and no agreement as to whether there is the best method to ensure consumer protection.

## **SAFETY AND LIABILITY FOR PRODUCTS**

In the EU there is a general law relating to product safety - Directive on general product safety.

Its purpose is very simple formulated in the Directive itself: "Manufacturers will bring to market only safe products."

How the manufacturer can ensure that his products - safe? The Directive contains certain criteria:

- compliance with applicable national laws

- compliance with European standards of health and quality of products that have been adopted as national standards

- compliance with other applicable national standards, guidance documents EU Code of Conduct for Business

- the use of advanced technologies

- compliance with reasonable expectations of consumers

If products create problems related to safety, manufacturers are required to provide information to consumers and to withdraw such products from the market if necessary. Distributors must also maintain appropriate records to enable the tracking of products (as well as ways of origin or defective components), monitoring of products subject to risks and dissemination of information about possible problems.

The government should be appointed body responsible for monitoring and ensuring compliance with safety and who also:

- market surveillance exercise, taking samples and checking products;

- requires placing warning information in cases where the use of products associated with risk;

- taking measures in case of problems - requiring temporary suspension of sales of products or its complete withdrawal from the market;

- creating opportunities and mechanisms for complaints by consumers about potentially harmful products, or to submit information on actual incidents of inappropriate levels of security.

In addition to this general Directive, there are also more detailed requirements on chemicals, toys, personal protective equipment, entertainment business, cosmetics, pharmaceuticals, food products, fire safety in hotels, fireworks. Some products, including cars or plug

electrical appliances can not be sold without undergoing testing for safety. But the general approaches such detailed sectoral regulatory rules are the same as in the general Directive, which sets safety requirements in standards and other reference documents if appropriate standards are not available.

The EU is developing other programs aimed at improving safety.

- Developing standards. Work on production holding specialized European standards bodies - the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standards (CENELEC), which, in turn, work closely with international standards bodies such as the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC). EU provides grant group that represents consumers in the negotiation of standards - European Association coordinating consumer representation in the process of standardization (ANEC), located in Brussels. Europe is also actively involved in the global standardization body Food Codex Alimentarius.

- Rapid alert systems. Such systems - is an agreement to provide reports that enable national authorities to notify each other about dangerous products so that they can take swift measures in their countries. If necessary, the Commission may take action pan-European scale with a view to removing unsafe products from the market. The main procedures are warning RAPEX (products), and the procedure of foodstuffs.

- European management control over the quality of food (European Food Safety Authority), established in 2002 to monitor the problems and hazards in food production across Europe.

## **PRODUCT LIABILITY**

What happens when a group of people or property harms any products?

The answer is contained in the first paragraph of the Directive on product safety: "The manufacturer is responsible for damages caused by deficiencies of its products."

If the products are imported, the responsibility of the distributor.

This means that consumers can sue manufacturers and demand compensation for damages. They have to prove the extent of damage and the fact that it was caused precisely by this production - which is not always easy to do. But they do not need to prove that this was due to the

negligence of the manufacturer; even if the manufacturer correctly completed all procedures to ensure the standards are correct written instructions, etc., will still be responsible in case of adverse effects. On the other hand, compensation may be reduced if the damage occurred in part because of how consumers use products.

Manufacturers have three starting points for protection:

The disadvantage was absent at the time of sale of goods;

Lack came through compliance standards (i.e. same standards were inadequate);

"State of scientific and technical knowledge at the time when the product was put into circulation was not sufficient to detect the presence of deficiency."

The last point, which is called "argument based on aspects of technological development» (development defence), causing heated debate. Consumer groups are always treated him negatively, because it allows producers to be less diligent in providing safety evaluation of new products. It also means that consumers can go without compensation, even when it is clear what caused them harm.

A recent analysis by the EU, concluded that the changes are not needed, and that the Directive provides the right balance between the interests of consumers and producers. It was decided that the strict liability (that does not include arguments based on technological development aspects) will limit the development of new products and funds spent on research on insurance claims for compensation. (Manufacturers usually lay in the cost of certain funds as insurance against product liability). National governments are allowed to apply stricter laws on product liability if they consider it necessary, but only Luxembourg and Finland seized the position of opportunity argument based on aspects of technological development.

## **BEST PRACTICES IN CONSUMER PROTECTION IN EU**

Each of the member countries of the European Union has its own history, traditions and achievements in the field of consumer protection. The experience of each country is unique. However, the European Community association seeks to create pan-European standards in all spheres public life, including in the field of consumption. These standards define a certain level of economic and social development of the EU and are a model for the new EU members and candidate countries today and in the future.

It is important that the level of the standards of the EU does not deter initiatives developed economies in their quest of the best and most effective practices, particularly in the field of consumer protection. This area of consumer policy and governments are under scrutiny not only of the European Commission, but also the community of consumers. Respect for the needs of the citizen as consumer is rooted in the distant past and belongs to the traditions of old Europe. The challenges of the 21st century, globalization of markets and the rapid pace of change in many countries require the European Space accelerate its movement in the achievement of recognized standards and norms that are the benchmark of development.

Among these important targets belonging to civil society organizations that are non-governmental, and therefore independent in its operations. Consumer organizations are an integral part of civil society and governments in many European countries support this public activity and delegate them of important state functions.

Experience German. A striking example of successful interaction between government and non-customers are Germany, one of the leading EU countries. 50 years ago the German government initiated an independent fund, now known worldwide as the Institute for Consumer Research Stiftung Warentest (Stiftung Warentest, SW) in Berlin. The importance of the work Stiftung Warentest for consumers according to the survey of independent organizations, namely 96% of German citizens are aware of SW activities, and more than a third of residents use the results of tests SW in the exercise of their purchases. Institute Stiftung Warentest informs consumers on the pages of the magazine "Test" and "Finanztest", as well as on the organization. After German unification in 1991, the number of subscribers "Test" reached more than one million, which was a major achievement and testimony SW consumer confidence in the objectivity of the findings of tests.

Experience Sweden. The country also elected its way into compliance and consumer protection. A wide network of information and counseling centers for consumers covering the whole country, reaching nearly every town and village. These centers perform an invaluable aid consumer protection to consumers, particularly in rural areas and representatives of many farms. In the major cities of consumers collaborating with universities and research institutions on different aspects of consumer issues, as well as government agencies that deal with consumer protection. State strongly supports social activity of consumers.

Experience Slovenia. Slovenia is one of the first countries of the former socialist system raised the prestige of the consumer to the appropriate height. The National Association of Consumer Slovenia deployed active in a wide range of consumer interests: studies of organic cosmetics to financial services. Noteworthy consumer associations cooperation with the government and business. And the government, business recognize the position of the consumer market and consumer rights secured by law, violation of which necessarily disclosed Association. This "advertising" makes unscrupulous businesses to resort to certain measures to address conflicts with the consumer and the law. There are effective European consumer centers that protect consumers' rights on cross-border shopping and implementation of compensation in violation of rights.

Experience Poland. Description and evaluation of the consequences of Poland's accession to the European Union in the field of consumer protection require caution. First, these effects beyond the first year of membership and cover system changes Polish regulations on consumer protection, which were made from the mid 90's due to bring Polish law into line with EU law.

As a result, created the legal basis of the system of consumer protection, as well as institutional and financial framework that led to a significant improvement in consumer protection even before May 1, 2004 second, the assessment of the effects of this accession field depends in particular on the level of compliance with the consumer protection, as well as securing their existence in the minds of market participants in Poland. Due to the therefore, the impact of assuming the position of consumers will be felt much later than in the first year of joining the EU.

Joining the EU has Polish consumers additional opportunities to improve the protection of their rights through the use of tools that operate at EU level, in particular EU consumer organizations. From May 2004 Poland has begun work to create matches of the EU, whose purpose - to provide consumers with the widest help in nomination at a joint complaints European market. These institutions belonging to the European consumer information center (YETSIS), which operates under the Department of Competition and Consumer Rights of January 2005 under the so-called System EEJ-net (European Extra-Judicial Network). Center, besides keeping information policy in the field of consumer rights, also provides legal and organizational assistance in case of cross-border disputes, including non-judicial resolution of disputes concerning

violations of consumer rights. Its creation and operation is funded 70% of the EU funds.

In addition, from May 1, 2004 Poland had the opportunity to participate in certain forms of institutional cooperation that guarantee greater security products. In particular, Poland became a member of the system wide notification of dangerous products to the European Union - PAREX. It was established, to ensure a high level of health and consumer protection in the territory of the EU Internal Market. The main and immediate task of the system - to ensure the rapid exchange of information between the Member States and the European Commission about dangerous products and allocated funds in the country to exclude or limit its time to market and possible use. Successfully entering this system information about the products as dangerous and precautions to remove it from circulation, resorted to entrepreneurs. As part of the European Commission informs Poland and other EU countries about dangerous products identified in other Member States. The task of the Polish authorities - to monitor the market to identify whether the product is in Poland, and if so, remove it and provide relevant information to the Commission.

Operation of the system in Poland gives the first impact. As a result of the new rules and joining systems PAREX from 1 May 2004 Office of Competition and Consumer society has provided information on about 20 products, the use of which may endanger the life and health of consumers. Most of them were withdrawn from circulation (eg, impact drill, computer monitors, baby clothes, toothbrushes, toys containing dangerous chemicals) or manufacturers have eliminated their shortcomings (for example, made components by specific brands, models and years of manufacture cars).

The key to the situation of consumers has first level of compliance and implementation of policies that serve their protection. Past experience shows that the legal and institutional changes in the policy of consumer protection have not found yet fully reflected in the minds of market participants in Poland - both consumers and entrepreneurs. Research carried out by the Department of Competition and Consumers, conclusions of the examination Commerce inspections and consumer complaints point to a lack of knowledge of the law and sometimes disregard the interests of buyers and insufficient dissemination of good market practices. The authorities often do not show sufficient understanding, in response to violations of the interests of consumers by unscrupulous firms. In this context, the full balance of membership

implications for consumer protection will depend on the implementation of the relevant provisions, which, in turn, creating "consumer identity", that general awareness of consumers of their rights and protection of these rights.

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